

## **REMARKS**

The Office Action dated April 8, 2008 has been received and reviewed. This response, submitted along with a Petition for a One-Month Extension of Time, is directed to that action.

Claims 1-4 have been amended and claims 35-42 are new. Support for the amended and new claims can be found in paragraph [0041] of the application's corresponding US publication, 2005/0245419 A1. The applicants particularly note that while the application disclosure does not provide *in haec verba* support the newly added claim range of "greater than 5 to 65%", the applicants submit that the new range would be understood by a person of ordinary skill in the art to be inherently supported by the original disclosure of 5 to 65%. See *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976). Accordingly, no new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

### **Claim Rejections- 35 U.S.C. §112**

The Examiner rejected claims 1-8, 10-15, and 18-34 under 35 U.S.C. §112, second paragraph as indefinite for the recital of the phrase "wherein radiation emitted by the gel interacts with radiation emitted by the primary particles" in claims 1-4 because it is not clear why or how the gel or primary particles emit radiation. The applicants respectfully traverse this rejection.

Definiteness of claim language must be analyzed in light of the content of the application disclosure. See MPEP 2173.02. The present application disclosure clearly sets forth in paragraph [0012] how and why the gel and primary particles emit radiation. Specifically, the disclosure states: The term "radiation" most preferably refers to visible light. In this context "emitted" is preferably taken to mean the component (of visible light) which is not absorbed by the component referred to

in the composition. For example, a yellow gel it is hereby assumed that the gel appears yellow because all of the frequencies of visible light are absorbed by one or both of the colouring agent and the gel itself, with the exception of the yellow component of visible light which is emitted. (US 2005/0245419, page 1, paragraph [0012])

The applicants submit that the person of ordinary skill in the art would clearly understand the full scope of the claim terms when read in light of the foregoing description. Accordingly, the applicants submit that the claims are not indefinite, and respectfully request that the Examiner withdraw this rejection.

#### Claim Rejections- 35 U.S.C. §102/103

The Examiner rejected claims 1-8, 10-15, 20-22, 24, 26-32 and 34 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Smerznak et al. (WO 99/00477); claims 18-19, 23 and 25 under 35 U.S.C. §103(a) as obvious over Smerznak; and claim 33 under 35 U.S.C. §103 as obvious over Smerznak in view of Fonsny (US 4,846,992). The applicants respectfully traverse these rejections.

The presently claimed invention now relates, in pertinent part, to a gel having a water content of *greater than 5% to 65%*. Smerznak, on the other hand, teaches a non-aqueous detergent having a water content that “should in no event exceed about 5% by weight”. (Page 22, lines 5-7). Thus, the presently claimed invention teaches a water content range outside of the range taught in Smerznak. Because Smerznak does not teach all of the limitations of the presently claimed invention, a *prima facie* case of anticipation cannot be established, and the applicants respectfully request that the Examiner withdraw rejection under 35 U.S.C. §102(b).

With respect to the obviousness rejections, the applicants submit that a *prima facie* case of obviousness is rebutted because Smerznak teaches away from the presently claimed invention. The presently claimed invention seeks to have a higher water content (greater than 5% to 65%) with a high ionic strength to prevent the particles from deteriorating in storage. (See paragraph [0041] of US 2005/0245419). Contrarily, as stated hereinabove, Smerznak explicitly states that the water content of the detergent should “in no event” *exceed* 5% by weight. In fact, Smerznak actually prefers that the water content be as low as possible, stating “[m]ore preferably, water content of the non-aqueous detergent compositions herein will comprise *less than about 1% by weight*”. (Page 22, lines 7-8)(emphasis added). A person of skill in the art would undoubtedly interpret this as Smerznak teaching away from a gel having a water content greater than 5%, as in the presently claimed invention. A *prima facie* case of obviousness is rebutted by a showing that the art, in any material aspect, teaches away from the claimed invention. See *In re Geisler*, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1990).

The applicants respectfully submit that Fonsny was cited against the specific embodiment taught in present claim 33, and does not remedy any of the deficiencies of Smerznak discussed herein. Accordingly, the applicants submit the presently claimed invention is not obvious in view of Smerznak, and respectfully request that the Examiner withdraw the rejections under 35 U.S.C. §103(a).

The applicants submit that the claims are now in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant’s attorney at the phone number listed below.

**CONDITIONAL PETITION FOR EXTENSION OF TIME**

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefore. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

**ADDITIONAL FEE**

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

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